

REMARKS

Formal Matters

Claims 2, 11, 17, 19, 43 and 71-92 are pending after entry of the amendments set forth herein.

Claims 2, 11, 17, 19, 43 and 71-90 were examined. Claims 2, 11, 17, 19, 43 and 71-90 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected Under 35 U.S.C. Section 102(b) (Baker et al.)

In the Official Action of December 2, 2008, claims 2, 11, 17, 19, 71-72, 74-77, 79, 83-85 and 87-90 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Baker et al., U.S. Patent No. 6,221,102.

The Examiner asserted that Baker et al. discloses an apparatus having a sinuous, stiffening framework 138 having a plurality of malleable sections (Fig. 11) formed of a deformable material which causes the framework to remain in a second configuration after being deformed from a first configuration.. While Applicants understand that the Patent Office's approach is to interpret claims and references as broad as is reasonably possibly, it is respectfully submitted that there should be some limit as to what is considered to be "reasonable". It is respectfully submitted that a reasonably broad interpretation should not be so broad as to interpret a disclosure as to mean the exact opposite of what is actually disclosed in the specification. The Examiner asserted that the framework 138 of Baker et al. is malleable and remains in a second configuration after being deformed from a first configuration. However, Baker et al. discloses the exact opposite. Baker et al. discloses at column 11, lines 69-63, that the natural spring forces of the helical coil springs 136 (a portion of which is formed by the Examiner's references struts or legs 138) serves to expand the graft to its expanded position as soon as the graft is free of the capsule 36. Thus, what Baker et al. discloses is exactly the opposite of what is being recited

in the present claims. That is, the graft of Baker et al. is deformed into a smaller configuration to be delivered. Then, upon release of the deformation forces, the graft of Baker et al. elastically springs back to its undeformed configuration. Opposite of this, the present invention is provided in a first configuration, is deformed to a second configuration, wherein the stiffening framework remains in the second, deformed configuration, even after removing the forces that caused the deformation. Claims 2 and 87 have been amended to further clarify this distinction. For at least this reason, it is respectfully submitted that this ground of rejection is clearly improper.

Further, the Examiner concluded, without any evidence to support the conclusion, that the intraluminal graft of Baker et al. is capable of being used for an anastomotic apparatus. Applicants strongly traverse this conclusion. The goal of a sutureless anastomosis device has been pursued by many researchers from many different companies, as well as academia, for well over a decade. Applicants respectfully submit that it would be naïve to assume, in view of all the research that has gone before, that one could simply use an intraluminal stent graft to perform a successful sutureless anastomosis.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 2, 11, 17, 19, 71-72, 74-77, 79, 83-85 and 87-90 under 35 U.S.C. Section 102(b) as being anticipated by Baker et al., U.S. Patent No. 6,221,102, as being clearly inappropriate.

Claims Rejected Under 35 U.S.C. Section 102(b) (Schomacher)

Claim 43 was rejected under 35 U.S.C. Section 102(b) as being anticipated by Schomacher., U.S. Patent No. 4,233,981.

The Examiner asserted, inter alia, that Schomacher discloses shaping, by bending the mounting structure to define a desired flow area. The Examiner rationalized this conclusion with the further statement that “when the tissue moves the device moves”.

Applicants strongly traverse this ground of rejection. It is respectfully submitted that Schomacher clearly fails to disclose “shaping, by bending the mounting structure to define a desired flow area between the first and second vessels”. Although Applicants do not disagree with the Examiner’s position that the device of Schomacher would move, once installed on a vessel if the vessel moved in the area where the device was installed, it is not understood how the Examiner would interpret this as shaping, by bending a mounting structure. The device of Schomacher is a simple compression

fitting, with two rigid washers that are drawn together under compression. No bending or shaping by bending is performed.

In view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 43 under 35 U.S.C. Section 102(b) as being anticipated by Schomacher, U.S. Patent No. 4,233,981, as being clearly inappropriate.

Claims Rejected Under Nonstatutory Double Patenting

Claims 2, 11, 17, 19, 43 and 71-90 were rejected on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over the claims of U.S. Patent Numbers 5868763, and 6190397. The Examiner asserted that even though the conflicting claims are not identical, they are not patentably distinct from each other because the patent(s) listed above disclose all the limitations of the current invention.

Applicants respectfully traverse. It is respectfully submitted that the Examiner has not set forth a prima facie case of obviousness for the rejections over any of U.S. Patent Numbers 5868763, 656558 and 6190397. It is respectfully submitted that merely because a prior patent discloses all of the limitations of a currently claimed invention, that this is insufficient basis for a double patenting rejection, as it is the claims that must be relied upon in the earlier patent to show double patenting. Otherwise, a patent could never issue as a continuation or division of an earlier patent without the filing of a terminal disclaimer in each and every continuation and divisional.

Further, it is respectfully submitted that U.S. Patent No. 656558 does not disclose any limitations of the present invention and has no similarity whatsoever.

In view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 2, 11, 17, 19, 43 and 71-90 on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over the claims of U.S. Patent Numbers 5868763, and 6190397, for failing to set forth a prima facie case of obviousness.

New Claims

New claims 91 and 92 depend from claims 2 and 89, respectively, and contain recitations that were previously present in claims 2 and 89 but which were extracted therefrom. Accordingly, it is respectfully submitted that claims 91 and 92 do not raise any new issues or present new matter, as these

recitations have been previously considered by the Examiner.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-101CON4.

Respectfully submitted,
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